

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed adoption) NOTICE OF PUBLIC HEARING
of NEW RULE I, related to summary) ON PROPOSED ADOPTION
judgment practice and procedure)

TO: All Concerned Persons

1. On November 3, 2006, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104) of the Walt Sullivan Building, 1327 Lockett Ave., Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 27, 2006, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Tonya McCormack, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-1376; fax (406) 444-7071; TDD (406) 444-5549; or e-mail tmccormack@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I MOTIONS FOR SUMMARY JUDGMENT (1) Any party may move, with or without supporting affidavits, for summary judgment in the party's favor upon all or some of the contested issues in any proceeding that comes before the board. A motion for summary judgment may be granted if the motion, affidavits, and other documentation show that there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law.

(2) A grievant is entitled to a hearing on a motion for summary judgment. If the summary judgment motion is dispositive of all contested issues, a hearing held pursuant to this rule satisfies the statutory right to a hearing for:

(a) Department of Transportation personnel who bring a grievance pursuant to Title 2, chapter 18, part 10, MCA; and

(b) Department of Fish, Wildlife, and Parks personnel who bring a grievance pursuant to 87-1-205, MCA.

AUTH: 2-4-201, 39-31-104, MCA

IMP: 2-18-1001, 2-18-1011, 2-18-1012, 87-1-205, MCA

REASON: The Board of Personnel Appeals (the board) has determined that the adoption of NEW RULE I, allowing for summary judgment practice, is reasonably necessary to avoid lengthy hearings in those cases where the available evidence indicates that there is no genuine issue as to any material fact and one party is

entitled to judgment as a matter of law. The board has recently been presented with matters where it appears that a motion for summary judgment would have provided the parties with an efficient way to resolve their dispute.

The board recognizes that under the statutory provisions being implemented by the rule, employees of the Department of Transportation and the Department of Fish, Wildlife, and Parks are entitled to a hearing when they are aggrieved by a serious matter of their employment and they have exhausted all other administrative remedies. This right is absolute and can only be waived by the grievant. However, the board recognizes that a hearing on a summary judgment motion may be appropriate when the parties come to an agreement that no material facts are in dispute or when the grievant is given an opportunity for a hearing.

ARM 24.26.212 provides other pertinent details regarding timelines and procedures for motion practice, so it does not appear reasonably necessary to restate those in the proposed new rule.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Tonya McCormack, Bureau Chief, Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 6518, Helena, Montana 59604-6518; by facsimile to (406) 444-7071; or by e-mail to tmccormack@mt.gov, and must be received no later than 5:00 p.m., November 13, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to

mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

8. The Hearings Bureau of the Centralized Services Division of the department has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 25, 2006